

AMENDED IN ASSEMBLY JUNE 30, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE MARCH 30, 2005

SENATE BILL

No. 1068

Introduced by Senators Escutia and Bowen
(Coauthors: Senators Alarcon, Alquist, Ashburn, Dunn, Figueroa,
Kuehl, and Speier)

February 22, 2005

An act to add Article 11 (commencing with Section 905) to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1068, as amended, Escutia. Telecommunications: consumer protection.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Pursuant to existing law, the commission adopted a general order applicable to all commission-regulated telecommunications utilities known as the telecommunications consumers' Bill of Rights.

This bill would state the intent of the Legislature to establish *telecommunications* consumer protections ~~that are at a minimum, as protective as for landline telecommunications and mobile telephony services, consistent with~~ those originally adopted by the commission in the telecommunications consumers' Bill of Rights. The bill would require that the commission, by July 1, 2006, develop and enforce consumer protection rules for telecommunications service, including mobile telephony services, as defined, that achieve certain policies and meet specified requirements. ~~The bill would additionally require~~

~~that the commission, by July 1, 2006, develop and enforce consumer protection rules for charges for noncommunications services on telephone corporation billings, that meet specified requirements. The bill would provide that if the commission fails to adopt rules that include specified requirements by July 1, 2006, the bill's requirements would become effective as of that date and the commission would thereafter be prohibited from adopting rules pursuant to the provisions requiring the adoption of rules.~~

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of the bill's provisions or of an implementing order or decision of the commission would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 11 (commencing with Section 905) is
2 added to Chapter 4 of Part 1 of Division 1 of the Public Utilities
3 Code, to read:

4

5 Article 11. Telecommunications Bill of Rights

6

7 905. (a) It is the intent of the Legislature to establish
8 ~~telecommunications~~ consumer protections ~~that are at a minimum,~~
9 ~~as protective as for landline telecommunications and mobile~~
10 ~~telephony services, consistent with those originally adopted by~~
11 the commission in Decision 04-05-057.

12 (b) For purposes of this section, the following terms have the
13 following meanings:

1 (1) “Consumer” means any individual or small commercial
2 entity that purchases or subscribes, or may potentially purchase
3 or subscribe, to any product or service provided or billed by a
4 telephone corporation.

5 (2) “Contract” means an agreement, including a consumer
6 service agreement, to supply products or perform services for
7 compensation, but does not include a tariff or the rates, terms,
8 and conditions contained in an approved tariff.

9 (3) “Marketing” means communication initiated by the
10 telephone corporation intended to attract a consumer to
11 purchase or subscribe to a product or service, disseminated
12 through television, radio, newspaper, written material,
13 telemarketing, or the Internet.

14 ~~(1)~~

15 (4) “Mobile telephony services” means commercially
16 available interconnected mobile phone services that provide
17 access to the public switched telephone network (PSTN) via
18 mobile communication devices employing radiowave technology
19 to transmit calls, including cellular radiotelephone, broadband
20 Personal Communications Services (PCS), and digital
21 Specialized Mobile Radio (SMR). “Mobile telephony services”
22 does not include mobile satellite services or mobile data services
23 used exclusively for the delivery of nonvoice information to a
24 mobile device.

25 ~~(2) “Contract” means an agreement to supply products or~~
26 ~~perform services for compensation, and includes a customer~~
27 ~~service agreement for tariffed services.~~

28 (5) “Telephone corporation” means a telephone corporation
29 as defined in Section 234, and includes agents of a telephone
30 corporation.

31 (c) The commission shall, by July 1, 2006, develop and
32 enforce consumer protection rules for telecommunications
33 service, including mobile telephony services, that achieve all of
34 the following policies:

35 (1) A consumer has a right to receive clear and complete
36 information about rates, terms, and conditions for available
37 products and services, and to be charged only according to the
38 rates, terms, and conditions to which the consumer has agreed.
39 This includes the right to receive available *written* contracts and

1 disclosures in the same language as used in the marketing of the
2 product or service.

3 (2) A consumer has a right to select services and vendors, and
4 to have the consumer's choices respected by telecommunications
5 service providers.

6 (3) A consumer has a right to personal privacy, to be protected
7 from unauthorized use of the consumer's records and personal
8 information, and to reject intrusive communications and
9 technology.

10 (4) A consumer has a right to participate in public policy
11 proceedings, to be informed of his or her rights and what
12 agencies enforce those rights, and to have effective recourse if
13 his or her rights are violated.

14 (5) A consumer has a right to accurate and understandable
15 bills for products and services authorized by the consumer, and to
16 fair, prompt, and courteous redress for problems the consumer
17 encounters.

18 (6) A consumer has the right to be treated equally with all
19 other similarly situated consumers, free of prejudice or
20 disadvantage.

21 (7) A consumer has a right to safety and security of person and
22 property.

23 (d) The rules adopted by the commission pursuant to
24 subdivision (c) shall include all of the following requirements:

25 (1) A telephone corporation shall *clearly and conspicuously*
26 disclose its rates, terms, and conditions of service ~~and, upon~~
27 ~~request, provide its customers~~ *at the point of sale and, upon*
28 *request, provide a consumer with a complete explanation of the*
29 *charges comprising the customer's consumer's bill. A telephone*
30 *corporation shall publish, and keep current on an Internet Web*
31 *site, the rates, terms, and conditions for services it offers for*
32 ~~services for which it currently has customers. currently effective~~
33 *tariffs and the key rates, terms, and conditions it currently offers*
34 *for each nontariffed offering subject to the commission's*
35 *jurisdiction, including mobile telephony service offerings. When*
36 *services are no longer being offered to new subscribers, a*
37 *telephone corporation may limit to current subscribers of those*
38 *services, access to those rates, terms, and conditions of service.*

39 (2) A telephone corporation shall make no statement about
40 rates and services that is deceptive, untrue, or misleading.

~~(3) (A) A customer may cancel, without termination fees or penalties, any new service or contract for service within 30 days after the new service or contract for service is initiated.~~

(3) (A) A telephone corporation shall not bind a consumer to a term contract that charges a penalty, fee, or other amount due to cancellation before the end of the term, unless the contract allows the consumer at least 30 days from initiation of actual service to cancel without payment of the penalty, fee, or other amount, except for the payment for use and normal recurring charges applicable to the use that was incurred before the consumer cancelled and the reasonable cost of work done to provide the service before the consumer canceled the service.

~~(B) A telephone corporation shall provide a customer with written confirmation of every order for service and a written copy of each copy of each available written contract between the telephone corporation and the customer.~~
consumer.

~~(C) A contract for service may not incorporate other information by reference, except where the referenced information is provided in a commission approved tariff, or a separate document provided simultaneously with the contract.~~

~~(D) A written confirmation shall include the rates, terms, and conditions of service, including the customer's right to cancel the service within 30 days.~~

~~(4) A telephone corporation shall provide a contract to a customer and make the disclosures required pursuant to paragraphs (1) and (2) in the same language used to advertise the product or service, upon the customer's request.~~

~~(5) Every advertisement of the price, rate, or unit value of a prepaid calling card or prepaid calling service shall include a disclosure of any geographic limitation on the advertised price, any minimum charges, any expiration policies, and any relevant fees or surcharges. If any language other than English is used in the advertising or promotion of the prepaid calling card or prepaid calling service the disclosure shall be in that language.~~

(4) A telephone corporation shall provide each available written contract to a consumer and make the disclosures required pursuant to paragraphs (1), (2), and (3) in the same language used in the marketing of the product or service.

~~(6)~~

1 (5) A telephone corporation may not require a deposit to
2 establish or reestablish service unless a ~~customer~~ *consumer* is
3 unable to demonstrate acceptable credit. No deposit imposed by
4 a telephone corporation may exceed twice the estimated monthly
5 bill for basic service. Every deposit shall be refunded after one
6 continuous year of timely payments for basic service by the
7 ~~customer~~ *consumer*, and not later than 30 days after basic service
8 is discontinued.

9 ~~(7)–~~

10 (6) Every telephone corporation billing statement shall be
11 clearly organized and contain a clear and concise description of
12 the product or service for which the charges are imposed. Every
13 billing statement may only contain charges for products and
14 services which have been authorized by the ~~customer~~ *consumer*.
15 ~~All mandated government taxes, surcharges, and fees required to~~
16 ~~be collected from customers and to be remitted to federal, state,~~
17 ~~or local governments shall be separately listed and identified as~~
18 ~~“government fees and taxes.” This section of the billing shall not~~
19 ~~include any charges for which the telephone corporation is not~~
20 ~~required to remit the moneys to the government. government~~
21 ~~taxes or other charges telephone corporations are required by~~
22 ~~law to collect from consumers and remit to a governmental entity~~
23 ~~shall be separately listed in a separate section of the telephone~~
24 ~~bill titled “government fees and taxes.” This section of the bill~~
25 ~~shall not include any charge the telephone corporation is not~~
26 ~~required to collect from the consumer and to remit the entire~~
27 ~~amount collected from the consumer to the government.~~

28 ~~(8)–~~

29 (7) A telephone corporation shall credit payments effective the
30 business day payments are received by the telephone corporation
31 or its agent. No billing shall include any previously unbilled
32 charge for intrastate service furnished more than three months
33 immediately preceding the date of the billing, except that the
34 billing may include roaming charges for mobile telephony
35 services on a system other than the subscriber's home system for
36 up to four months immediately preceding the date of the billing,
37 and the billing may include charges for collect, third-party, and
38 calling card calls for up to the five months immediately
39 preceding the date of the billing. Telephone corporations shall

1 prorate charges for basic service for partial months. Billings shall
2 be based on the rates in effect at the time the service was used.

3 ~~(9) A telephone corporation shall not change a customer's~~
4 ~~contract in a way that results in higher rates or more restrictive~~
5 ~~terms or conditions without the express consent of the customer.~~

6 *(8) No telephone corporation shall change a consumer's*
7 *contract in a way that results in higher rates or charges or more*
8 *restrictive terms or conditions without the express consent of the*
9 *consumer, except that a telephone corporation may pass through*
10 *any increase in a tax or fee the telephone corporation is required*
11 *to collect from the consumer and remit to a governmental entity,*
12 *or any increase in a tax or fee that the Federal Communications*
13 *Commission or the Public Utilities Commission requires the*
14 *telephone corporation to pay and that the telephone corporation*
15 *remits in its entirety from the increased amount collected.*

16 ~~(10)–~~

17 *(9) A telephone corporation shall provide written notice to any*
18 ~~customer~~ *consumer* whose payments are overdue not less than
19 seven calendar days prior to terminating service for nonpayment.
20 Basic exchange service may not be disconnected on any day that
21 telephone corporation representatives are not available to assist
22 ~~customers.~~ *consumers.*

23 ~~(11) A telephone corporation shall investigate a customer~~

24 *(10) A telephone corporation shall investigate a consumer*
25 *billing dispute and reach a determination and communicate that*
26 *determination to the customer within 30 days consumer within 30*
27 *days of the date the dispute was communicated to the telephone*
28 *corporation. During the investigation of the customer consumer*
29 *billing dispute, no late charge or penalty may be collected from*
30 *the customer consumer, the charge in dispute may not be sent to*
31 *collection, and no adverse credit report may be filed as to the*
32 *customer. Disputes shall be resolved pursuant to California law*
33 *and the forum for adjudication of disputes shall be the county in*
34 *California in which the customer receives the billing or the*
35 *customer's primary place of use of the service. A telephone*
36 *corporation shall not hold customers liable for costs resulting*
37 *from complaints before the commission, other agencies, or*
38 *arbitrators. consumer. A telephone corporation shall not provide*
39 *as a term or condition of service, for a choice of law other than*
40 *that of California, or for a forum for adjudication of disputes*

1 *other than the county in California in which the consumer*
2 *receives the billing. A telephone corporation shall not hold*
3 *consumers liable for expenses resulting from complaints before*
4 *the commission, other agencies, courts, or arbitrators.*

5 ~~(12)–~~

6 (11) A telephone corporation shall designate one or more
7 representatives to be available during regular business hours to
8 accept Consumer Affairs Branch inquiries from the commission.
9 The telephone corporation shall provide all documents and
10 information requested by the branch.

11 ~~(13) A telephone corporation shall issue an identification card~~
12 ~~to every employee who has occasion to enter the premises of~~
13 ~~customers on behalf of the telephone corporation. No telephone~~
14 ~~corporation shall misrepresent, or allow its employees to~~
15 ~~misrepresent, its association or affiliation with the corporation~~
16 ~~when soliciting or implementing the customer's agreement to~~
17 ~~purchase products or services.~~

18 ~~(14) A telephone corporation shall provide every residential~~
19 ~~customer, and every mobile telephony handset that is~~
20 ~~technologically compatible with its system, with access to the~~
21 ~~9-1-1 emergency dialing system regardless of whether an account~~
22 ~~has been established.~~

23 ~~(e) The commission shall, by July 1, 2006, develop and~~
24 ~~enforce consumer protection rules for charges for~~
25 ~~noncommunications services on telephone corporation billings,~~
26 ~~that include all of the following:~~

27 (12) *A telephone corporation shall provide every residential*
28 *consumer, to the extent permitted by existing technology or*
29 *facilities, and every mobile telephony service handset that is*
30 *technologically compatible with its system, with access to the*
31 *“911” emergency dialing system regardless of whether an*
32 *account has been established.*

33 ~~(1)–~~

34 (13) (A) (i) A telephone corporation billing may not contain
35 noncommunications related charges unless the telephone
36 corporation obtains the express written authorization of the
37 ~~customer~~ consumer to include noncommunications charges on
38 that consumer's bill and the telephone corporation uses a
39 personal identification number (PIN) or other equally reliable
40 security procedure approved by the commission, that is designed

1 to prevent persons or entities other than the ~~customer and~~
2 ~~individuals authorized by the customer~~ *consumer and individuals*
3 *authorized by the consumer*, from placing charges.

4 *(ii) Only charges that the consumer has specifically authorized*
5 *at the point of sale may be included on the subscriber's bill.*
6 *Point of sale authorization must be provided by use of a PIN*
7 *number or other equally reliable security measure.*

8 ~~(2)~~

9 (B) A telephone corporation shall take reasonable precautions
10 to screen vendors and billing agents before agreeing to provide
11 billing services for noncommunications related charges by the
12 vendor or billing agent, in order to screen out unreliable or
13 untrustworthy business entities.

14 ~~(3) A telephone corporation shall not disconnect basic~~
15 ~~telephone service for nonpayment of noncommunications related~~
16 ~~charges.~~

17 ~~(4)~~

18 (C) A telephone corporation shall separately identify all
19 noncommunications related charges on every billing, with clear
20 and concise descriptions of the product or service for which a
21 charge has been imposed.

22 *(e) If the commission fails to adopt rules within the time limits*
23 *specified in subdivision (c), the consumer rights and protections*
24 *set forth in subdivision (d) shall be effective and the commission*
25 *shall not thereafter adopt rules pursuant to the provisions of this*
26 *section.*

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the
32 penalty for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition of a
34 crime within the meaning of Section 6 of Article XIII B of the
35 California Constitution.

1		_____
2	CORRECTIONS:	
3	Text — Page 3.	
4		_____

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